

Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 19 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 95-34
Table of Allotments)	RM-8654
FM Broadcast Stations)	
(Rapid City, South Dakota))	
)	
TO: Chief, Allocations Branch)	DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

Associated Investors, Inc., ("AII"), by its attorneys and pursuant to Sections 1.401 and 1.420 of the Commission's Rules, hereby submits its reply comments in the above-captioned rulemaking proceeding.

1. This proceeding began with a petition by Conway Broadcasting ("Conway") to amend the FM Table of Allotments to add Channel 222C to Rapid City, South Dakota. On March 29, 1995, the Commission released a Notice of Proposed Rulemaking ("NPRM") setting forth that proposal.

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2. On May 22, 1995, the comment deadline established by the NPRM, AII filed "Comments and Counterproposal" in which it requested that the Commission deny Conway's petition to add Channel 222C at Rapid City, South Dakota, and instead amend the FM Table of Allotments to add Channel 222C at Lead, South Dakota as the community's first local aural service. In that pleading, AII stated its intention to apply for the Lead station if the channel is allotted, and to construct and operate the station if awarded the construction permit. In a Public Notice released June 2, 1995, the Commission announced that AII's proposal will be treated as a counterproposal in this proceeding, and solicited comments on the counterproposal by June 19, 1995.

3. On June 6, 1995, Conway filed "Reply Comments of Conway Broadcasting" in which it proposed the following resolution of this proceeding: Conway restated its proposal that 222C be allotted to Rapid City, and proposed that a new channel, Channel 277C, be allotted to Lead. Conway stated that both allotments could be made **if** Channel 252A were substituted for vacant Channel 276A at Sundance, Wyoming, a community heretofore not considered in this proceeding.¹

4. Conway's new proposal, set forth in its June 6, 1995, Reply Comments and reasserted by reference in its June 16, 1995,

¹ On June 16, 1995, Conway filed a letter with the Commission requesting that its Reply Comments be considered in connection with AII's counterproposal.

letter filing, must be rejected. Commission precedent is clear that the introduction of Sundance, which was not part of the initial proposal or the counterproposal in this proceeding, constitutes an untimely filed counterproposal, which may not be accepted or considered herein. See 47 C.F.R. § 1.420(d); Ashland, California, Rolla and Monroe City, Missouri, 8 FCC Rcd 1799 (MMB 1993), modified on recon. on other grounds, 9 FCC Rcd 2306 (MMB 1994); Grenada, Artesia and Okolona, Mississippi, 7 FCC Rcd 4838 (1992).²

5. Thus, at issue in this proceeding is whether the public interest would be better served by the allotment of Channel 222C to Rapid City, as proposed by Conway in its initial petition, or the allotment of Channel 222C to Lead, as counterproposed by AII. As demonstrated in AII's "Comments and Counterproposal," there is no question that under the Commission's FM allotment priorities the allotment of a first local transmission service at Lead must be preferred over the allotment of the thirteenth such service at Rapid City. Accordingly, Channel 222C should be allotted to Lead.

6. In sum, AII respectfully requests that the Commission dismiss the untimely counterproposal set forth in Conway's June 6,

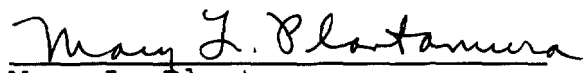
² Because Conway's counterproposal must be rejected, the Commission must likewise reject as moot Conway's request (on Page 3 of its Reply Comments) that the Commission sever the Lead and Rapid City allotment proposals and consider them in separate dockets. The proposals are directly competing ones, and must be considered in the same proceeding.

1995, Reply Comments, and reasserted in its June 16, 1995, letter filing, and consistent with the Commission's FM allotment priorities amend the FM Table of Allotments to add Channel 222C to Lead, South Dakota. AII herein restates its intention to apply for the channel at Lead, and to promptly construct and operate the station if awarded the construction permit.

Respectfully submitted,

ASSOCIATED INVESTORS, INC.

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June 19, 1995

CERTIFICATE OF SERVICE

I, Elizabeth Queen, an employee in the law offices of Roberts & Eckard, P.C., do hereby certify that true copies of the foregoing "Reply Comments" were sent June 19, 1995, by first-class United States Mail, postage prepaid or, as indicated, by hand, to the following:

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